

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 07-0202
Adjusted Gross Income Tax
For the Year 2003, 2004, and 2005

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Indiana Source Income – Adjusted Gross Income Tax.

Authority: IC § 6-3-2-2(a); 45 IAC 3.1-1-25.

Taxpayer argues that as a New Hampshire Resident, he is not subject to Indiana Adjusted Gross Income Tax on money attributable to horse racing activity in Indiana.

II. Losses – Adjusted Gross Income Tax.

Authority: IC § 6-8.1-5-1(b).

Taxpayer maintains that if the income derived from Indiana horse racing activity is subject to Adjusted Gross Income Tax, the income should be offset by the losses attributable to those same activities.

STATEMENT OF FACTS

Taxpayer is a New Hampshire resident who earned money from participating in horse racing activity at an Indiana location. Taxpayer did not file Indiana income tax returns during 2003, 2004, or 2005.

The Department of Revenue (Department) received information that taxpayer "received reportable compensation through the Horsemen's Bookkeeper" at an Indiana horse track. These payments were reported as "miscellaneous income" on federal form 1099. Because taxpayer had not filed Indiana returns, taxpayer was notified by mail to file Indiana returns but did not respond.

The Department prepared an "Investigation Summary" based on the "best information available" which resulted in an assessment of Indiana income tax. Taxpayer protested the assessment, and an administrative hearing was conducted by telephone during which taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Indiana Source Income – Adjusted Gross Income Tax.

DISCUSSION

Taxpayer argues that because he is not a resident of Indiana, he is not subject to the state's adjusted gross income tax. Taxpayer errs. IC § 6-3-2-2(a) states that "[w]ith regard to corporations and nonresident persons, 'adjusted gross income derived from sources within Indiana', for the purposes of this article shall mean and include . . . income from real or tangible personal property located in this state [and] income from doing business in this state"

The Department regulation makes the issue clear. "All persons who are not residents of Indiana are required to report that portion of their entire income directly or constructively from or attributable to business, activities or any other source within Indiana" 45 IAC 3.1-1-25.

Taxpayer's argument to the effect that he is a "year round resident of the State of New Hampshire . . ." is unavailing. Taxpayer received income attributable to activities conducted within Indiana and should have reported that income on the appropriate Indiana income tax returns.

FINDING

Taxpayer's protest is respectfully denied.

II. Losses – Adjusted Gross Income Tax.

DISCUSSION

During the hearing, taxpayer's representative raised an additional question concerning the proposed assessment. Taxpayer maintained that the amount of income attributable to Indiana activity was offset by the amount of losses attributable to that same activity. To buttress that claim, taxpayer submitted a "pro-forma" Indiana 2005 income IT-40 PNR return.

Once the Department issued the proposed assessments, the taxpayer has the burden of demonstrating that assessments are incorrect. IC § 6-8.1-5-1(b) states that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

In taxpayer's case, he has produced evidence sufficient to reasonably infer that the taxpayer's Indiana source income was offset by the losses claimed. Taxpayer's protest is sustained subject to audit verification. Taxpayer will be requested to submit the corresponding federal "Schedule C" returns in order to verify the amount of losses claimed.

FINDING

Taxpayer's protest is sustained subject to audit verification.